CF0000060866

CA 654/96

XII-188(Jail)
C.J.P.R.—5,000-9-81

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APPEAL OF PRISONER

Division Bench (riminal)

No. 874 Name परसादू

Father's name नन्दू गोंड़

Residence ग्राम-रकेसी, थाना-अम्बु Age ३८ वर्ष

Sentenced to आजीवन कारावास on 3.1.96

Under section ३०२ भा.द.स. by श्री जे.के.एस. राजपूत, सत्र न्यायाधीश सरगुजा (अम्बिकापुर)

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement —

2 Date of which copy received 3.1.96

3 Date on which Appeal sent

4 Whether the prisoner wishes to be represented or not – Y

High Court of Madhya Pradesh
JABALPUR
Rec'd on 27 FEB 96
Registration No. 107
Receipt Clerk
High Court, Jab...

Read cr.st/96 Cau COM

No. 874 Name परसादू

Continued in अम्बिकापुर Jail

No. 41 dated 5-1-96 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

स-निर्णय प्रतिलिपि।

अधीक्षक
Superintendent-Central/ Distt./ Sub-Jail)
जिला जेल अम्बिकापुर

Date of receipt in C. J. M.'s Office 5/1/96

Date of receipt of record to accompany 8/2/96

Memo of Appeal of the Appeliate Court.

No. 01/CRM. Dated 8/2/96 198

Forwarded to the सामान्य द्वितीय मजिस्ट्रेट प्रथम श्रेणी

C.J.Magistrate 21/2/96

सामान्य द्वितीय मजिस्ट्रेट प्रथम श्रेणी अम्बिकापुर (स.स.)

Date of receipt in Appliate Court

(P.T.O.)

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आदेश पत्रक

मामला क्रमांक Cr.A.No. 654/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 654 OF 1996

Appellant : Parsadu

Vs.

Respondent : State of Madhya Pradesh

Shri Satyendra Sahu, learned counsel for the appellant.

Shri U.N.S.Deo, learned G.A. with Shri M.P.S.Bhatia, learned Panel Lawyer for the respondent/State.

ORAL JUDGMENT
(08.03.2006)

L.C.BHADOO, J

By this appeal under Section 374(2) of the Criminal Procedure Code the accused/appellant has questioned the legality and correctness of the impugned judgment dated 15.07.94 passed in S.T. No. 350/94 whereby the learned Sessions Judge, Ambikapur after holding the accused/appellant guilty for committing the murder of one Rowan Ram convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

2. **Case of the prosecution, in brief, is that Phool Sai, son of the deceased lodged a report Ex.P-1 in the police station Ambikapur to the effect that a day before thereto i.e. on 15.07.94 he went to his agricultural field and his father Rowan Ram went for grazing the cattle and while he was returning**

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to his house in the evening he heard the screams of his father. Then he rushed towards that side along with Dasrath, Bhadar & Jagarnath ~~and~~ & when he reached near the house of accused Parsadu, he saw that Parsadu was attacking his father Rowan with the axe on which he along with Dasrath, Bhadar and Jagarnath snatched the axe from the accused/appellant. The accused assaulted with the axe on the head of Rowan as a result of which he fell down and blood started oozing out of the head. The second assault was made on the back of Rowan as there was dispute regarding partition of land with Parsadu who is his uncle. They brought Rowan to his house and he was not talking and they took him to the hospital but he succumbed to the injuries on the way. Receiving this report, the S.H.O. of police station Ambikapur registered the crime No. 598/1994 under Section 302 of the IPC. He also took into possession the weapon of offence – axe under Ex.P-2 which was produced by Phool Sai. After giving notice Ex.P-4 to the panchas he prepared Panchnama Ex. P-5 of the body of Rowan. The dead body of Rowan Ram was sent to Government Hospital, Ambikapur under Ex. P-7 where Dr. N.K. Pandey conducted the post mortem on the body of Rowan and prepared post mortem report Ex.P-8. On enquiry by the Investigating Officer vide Ex.P-9 the doctor gave his opinion Ex.P-9A that the death of Rowan was homicidal. The Investigating Officer again made an enquiry under Ex.P-10 regarding the fact as to whether the injuries on the body of Rowan could be caused by axe in question and the doctor gave his opinion under Ex.P.-10 A and ~~found~~ opined that the injury could be caused by that object. Site plan Ex.P-13 was prepared by Patwari. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case of Sessions Judge,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Ambikapur where the prosecution in order to establish the charge against the accused/appellant examined nine witnesses. On the other hand, statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.	
3.	**Learned Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.**	
4.	**We have heard Shri Satyendra Sahu, counsel for the accused/appellant and Shri U.N.S.Deo with Shri M.P.S.Bhatia on behalf of the State.**	
5.	**Homicidal death of Rowan Ram is not in dispute.**	
6.	**As far as the involvement of the accused/appellant Parsadu in the crime in question is concerned, in this case, there is no evidence of eyewitness witnessing the accused assaulting the deceased with the axe. However there is circumstantial evidence to the effect that when the witnesses namely Phool Sai P.W.-1, Jagarnath P.W.-2 and Bhadar P.W.-3 reached to the spot after hearing the screams of Rowan Ram, saw that the accused/appellant Parsadu was standing near the body of Rowan Ram holding axe-the weapon of offence and they snatched the axe from him.**	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
7.	In order to record the conviction based on the circumstantial evidence the Court is required to ascertain such evidence which must satisfy the following tests : a. "the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; b. those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; c. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and d. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence".	
8.	Now we shall proceed to examine the evidence adduced by the prosecution in order to record conviction in the crime in question based on circumstantial evidence. P.W.-1 Phool Sai, son of deceased Rowan Ram has stated that on the fateful day at about 7.00 p.m. his father went to the	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	house of his uncle for handing over the ox. He came out of his house to urinate on which he saw that his father was lying in front of the house of accused/appellant Parsadu. The house of Parsadu is 40-50 paces from his house and he also saw that accused Parsadu was standing near Rowan ram holding axe in his hand on which he shouted and hearing his shouts Jagarnath and Bhadar came and they snatched the axe from his (Parsadu) hand and saw that there was injury on the head and back of his father and blood was oozing out of the injury.	
9.	P.W.-2 Jagarnath and P.W.-3 Bhadar have corroborated the above evidence of P.W.-1 Phool Sai. In the evidence of these witnesses it has come that deceased was the brother of the accused and there was a motive to commit the crime as there was dispute between the accused and the deceased regarding land and all the three witnesses saw the accused standing near Rowan Ram holding the axe in his hand and Rowan Ram was in injured condition and all of them snatched the axe from the accused.	
10.	In the cross examination of these witnesses the defence has not been able to elicit any circumstance which shows that why the accused/appellant was standing near Rowan Ram holding axe-weapon of offence in his hand. Moreover the axe in question was examined by the doctor, who has mentioned in his report Ex. P-10 A that the injuries which were found on the body of Rowan Ram could be caused by the axe in question. Thus, in view of the above circumstantial evidence it is established that accused/appellant Parsadu was the author of the injuries on the body of Rowan Ram and there is no other possibility of coming any	

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	third person on the scene of occurrence to cause the injuries, therefore, the involvement of accused inflicting the injuries on the body Rowan Ram is established beyond reasonable doubt.	
11.	Now coming to the question as to whether on the above facts the prosecution has been able to establish the offence punishable under Section 302 of the IPC. There is nothing on record which goes to show that accused assaulted the deceased, who was the real brother of the accused, with the intention to cause death. From the evidence available on record, reasonable inference can be drawn that since there was dispute regarding partition of land between the accused and deceased and accused all of a sudden attacked the deceased with axe in question therefore the intention to cause death is missing. Moreover there were two injuries on the body of the deceased but looking to the weapon of offence-axe and part of the body where the injuries were inflicted it can safely be inferred that while attacking the deceased, the accused had knowledge that by attacking with the axe, he is likely to cause his death. In view of the above, we are of the considered opinion that the offence against accused/appellant Parsadu does not travel beyond Section 304-I of the IPC.	
12.	In the result the appeal is partly allowed and the conviction and sentence imposed upon accused/appellant under Section 302 of the IPC are set aside. Instead thereof he is convicted for commission of the offence under Section 304-I of the IPC and sentenced to undergo imprisonment for ten years. The accused/appellant is in custody since 18.07.94 thereby he has already served the sentence imposed upon him which is not disputed by	

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t -	**the Additional Public Prosecutor, it is directed that the accused/appellant be set at liberty forthwith if not required in any other case.** **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**